

MAINE STATE HARNESS RACING COMMISSION  
MINUTES OF MEETING  
AUGUST 27, 2020  
HELD ONLINE VIA ZOOM APPLICATION

Commission Members Present: Michael Timmons, William McFarland, James Kelley, Jr., Edward Kelleher, and Richard Shiers

Commission Members Absent: None.

Staff Members Present: Ron Guay, AAG, Henry Jennings, Carol Gauthier, Aimee Carlton, Jaime Wood, and Miles Greenleaf

1. **Call the Meeting to Order and Introductions:** Michael Timmons
2. **Adjudicatory Hearings:**

**RE: Review of the Maine State Harness Racing Commission's 2022/2023**

**Recommended Biennial Budget.** 8 M.R.S. § 267 requires the Department of Agriculture, Conservation and Forestry to develop a recommended operating budget for the biennium. The Department will present its recommended budget to the Commission for its review. The Commission will take testimony concerning the recommended budget and may make recommendations concerning the budget to the Commissioners.

AAG, Guay stated he would suggest for this process, he would recommend that the Department of Agriculture make its recommendations and then the Commissioners could ask the Department about their recommendation; and then Chair Timmons you could just ask whether or not anybody wishes to speak to the recommendation and then after everyone has had their opportunity to speak he doesn't think you need to swear people in and qualify the Commissioners so all of those things for an adjudicatory hearing you don't need to do that. The department will present the budget and you could ask anyone on the call that wish to weigh in on the matter. Commissioner Timmons stated first he'd like to be certain that each of the Commissioners did receive the budget document sent from the department and hope that you have that with you. He'll turn this over now to Mr. Jennings and ask him to do his review of that presentation. Mr. Jennings stated the first thing he thinks he needs to clarify for the Commissioners is that they're talking in this case about state fiscal year budgets and this is July 1st through June 30 budgets. Some of the things that they put out are calendar year budgets such as what goes into the annual report. In the end they're pretty much similar but they're just the time frames. If you look where they're tasked at preparing a budget in the next biennium which begins July 1, 2021, so almost eleven months from now this biennium budget will start. Most of the numbers that are contained in the budget are numbers that are fed to them through the budgeting process. In other words, all of the revenue comes from revenue forecasting pretty much. Those aren't numbers that they calculate or come up with. They come from revenue forecasting at the top. Down below you have essentially the expenses and most of those expenses are down at the bottom and those are the pass-through funds. If you look on the left hand column, that was actual expenditures for fiscal year 2020 which ended a while ago, June 30. A lot of this ends up being pass through funds. The revenue forecasting did project lower revenues in the next two years based on the current economic situation. The only line which is one that is higher than in the past is line 49 under expenses general operations and that includes a lot of things, but Ms. Bonenfant and him spent some time mining through that, but the biggest piece of that general operations was actually marketing; and he was surprised that it showed up on that

particular line because they've been spending close to in 2019 they spent close to \$200,000 in marketing overall so that line is higher. They have no idea again beginning eleven months from now what the revenues will be like and whether or not they would spend that amount of money. Really all you're looking at are numbers that will end up as being allotments. Allotments are a legal term for legislative authority to spend money. It doesn't represent actual cash or anything like that. It's just our allotments. The section 267 of Title 8 requires them to present the biennium budget to the Commission and to conduct a hearing and take testimony. You have the opportunity as Commissioners to make recommendations to the Commissioner of Agriculture relative to this budget. The Commissioner may or may not act upon those recommendations. You review what's here and if you have recommendations that you want to provide to the Commissioner of Agriculture then you have to let them know. Commissioner Timmons asked if there is a deadline for the first time, they've seen this right now. Is there a deadline when they need to meet? Mr. Jennings stated to provide those recommendations. Commissioner Timmons stated yes, in other words is today a basically the meeting and then they need to get feedback from the people that are here if anyone has any, and then the Commissioners would have a review of any particular item; but his question would be, is there a deadline when they'd actually have to take a vote or do they have to take a vote at the end of today. Mrs. Carlton stated she's the business manager for the department. The statutory requirement to have a budget to the budget office as a department is September 1<sup>st</sup>, so they do need you guys to act on this. But she will give you a little more background on what this budget represents if it will give you some more information to make your decision. What you're seeing in front of you is no changes to what your past board or commission has approved other than the changes in which revenue forecasting has made for their predictions of revenues for the next biennium, and contract increases for salaries that were approved over the last two years; so there's really what you're looking at is what you've had in the past and adjusting based upon the pass through funding for your revenues from the casino, racino that are adjusted twice a year by the revenue forecasting committee. She doesn't know if that helps or if you have any other questions. Commissioner Timmons stated thank you for filling them in. It just he thinks that it's information that it's only seen once or twice, and they've only had a short time to do it and they're at a deadline of September 1<sup>st</sup> and he'd say they won't be meeting again. So, he would like each Commissioner to be looking through this very closely to see if they have any questions, and he's going to move on to the public to see if there's any comments from the public. He's not sure if there's anybody from the public would have actually even seen this document. Mr. Norris stated his only question is on the revenue side. Where is income from the three OTB's. He sees the income for slots, but he doesn't see the projected income for revenues. Where is the revenues stream on the revenue side for the OTB's? Commissioner Timmons asked if someone from the department that could answer. Mr. Jennings stated he thinks its line 1301, 1302, and 1305 up at the top. Mr. Norris stated they're kind of lumped together from income from harness racing, wagering and the OTB's that's all together. Mr. Jennings stated yes. All of the wagering income is lumped together. Commissioner Timmons asked if there is anyone else that has any comment. Commissioners, I would like to have each Commissioner respond to anything that they feel they need to have either more information. You have all the numbers right there in front of you. So, if you have any questions about that first section under revenues lets hear it now, and if you don't then he'll move on to the next group, but for right now the one under revenue. Commissioner McFarland stated he's comment would be he can only hope that their projections are correct with that \$3 million dollar increase in the slot machine revenue. They certainly could use that from 22 to 23. Commissioner Kelley stated he would agree with what Commissioner McFarland just said. Somebody must have an awfully good crystal ball to come up with these figures. Commissioner Shiers stated he doesn't know if this is the appropriate time to do it and it's not in this and if it can be done. He was hoping that through

the state, and the fairs and both commercial tracks that they could get a contract for all their venues with the Roberts signals, so they'd be all tied together. He thinks this line 49 you said that \$216,000 and some dollars is mostly marketing, and he knows the Roberts signal is a lot more expensive than that. Is there any way that they could look ahead for the future to try to plan and see if they could somehow get a contract that they could market their product globally? This may not be the right time to do that. Mr. Jennings stated he'd read from the statute a little bit. This is from the revised statute from LD 1590 that went into effect on June 16<sup>th</sup> and it says, "during the biennium, the commission may conduct additional hearings and receive additional testimony on revisions on the budget including an expenditure for a discretionary activity". So, he guesses what it is saying is it's a two-year budget period and what it's saying is because of all of their money no general fund money, no federal grants it's all what they call dedicated or special revenue sources of funds. You have the ability to have another hearing later on and discuss things exactly like what Commissioner Shiers is talking about and then make a decision at that point. So, he thinks what Commission Shiers is talking about is something that's high on his radar. He doesn't think they need to solve that today. Commissioner Timmons asked if any other Commissioner had any comments on that first section under revenue. Could Mrs. Carlton go back to on that first section where you have anticipated the slot revenue to be \$9,469,542. Based on the situation that they've been in or have been in for the last few months could you tell him how you arrived at that figure of approximately how you do that. Mrs. Carlton stated actually she cannot. But she can tell you where you can go to find that information. Normally in a non-pandemic year the revenue forecasting committee for the State of Maine meets twice a year and they go through all of the state's economist go through and make those projections, and then anybody that has accounts that are affected by that are adjusted which the Harness Racing Commission account is part of that. They are very detailed. Their reports are very detailed. How they get to those numbers she can't tell them that. But she can point them to a link that shows the latest forecast report. These numbers actually come out of that. Commissioner Timmons stated that's helpful. He thinks they can all understand that situation. We haven't had a situation like we've in right this minute. He hopes we don't have to be in there again, so he hopes those numbers being solid. Commissioner Kelleher asked what's the date they have to give for final approval on this. Commissioner Timmons stated that Mrs. Carlton just said to them before that September 1<sup>st</sup> is a deadline; however, Mr. Jennings also said that even if that's to happen which they need to do it because they'd have to have a special meeting in the next 4 or 5 days and that's not going to happen. If we do this, he heard Mr. Jennings say, there are times when they'd be able to reopen this and discuss these matters and that's what they've already done this year. Commissioner Kelleher asked how much activity did Mr. Jennings play in the development of this proposal. Mr. Jennings stated not a lot. These numbers are numbers that come from past budgets and from revenue forecasting. Mrs. Carlton stated correct. What you're looking at here is what's considered a baseline budget. It's statewide when they prepare for a biennium budget. You're offered from the budget system what's considered a baseline budget meaning what did you have in the last biennium by year and then from that you deviate to pluses and minuses based upon what you need to have changed so what you're looking at is only the adjustments that revenue forecasting has predicted through their process and any contractual agreements for employee salaries and benefits that might have happened over the past two years. Commissioner Kelleher stated he's a little familiar with the process. He served for years on the appropriations committee in the legislature. These are estimated. Mrs. Carlton stated yes. A budget is always an estimate sir. That is correct. Commissioner Timmons stated that this would be a time when anyone in the audience. They're not going to the end of this meeting and try to come back to this. Is that appropriate Mr. Guay. AAG, Guay stated yes. If you intend to vote on it, he does have a roll call. Commissioner Timmons asked if there was anyone in the audience today that have any comments or questions, they can still do their

best to get the answer if they don't have it. Hearing none, Mr. Jennings do you have anything further you want to add to this before we've only been twenty minutes to make a decision that we need to understand that this is an estimate that something that the state has to have and they have to have a yea or nay on it by September 1<sup>st</sup>. That doesn't mean that's cut in stone they can go back through it if they need to, he understands. Is that correct Mr. Guay. AAG, Guay stated correct. Commissioner Kelleher stated he has a question for you Mr. Chairman. Commissioner Timmons stated who is it. Commissioner Kelleher stated what about the all other personal services. Mr. Jennings stated that's 31 through 39 under expenditures and it says a note 2 off to the right. Those numbers are fed to them. Commissioner Kelleher stated personal services haven't been finalized yet has it. Mr. Jennings stated no. They're still estimated number. Mrs. Carlton stated what happens is whatever's been authorized in the past for positions that run in this account gets fed into the system and any adjustments that need to be made she believes note 2 notes that it has not been finalized at this point, so the question in to you folks is once that is calculated she believes the note where it says Commission to approve is lines 40 through 85 as the salary numbers may change but not the position count so if for example the health insurance rates go up or we can all hope down that number could be changed based upon what they get from the budget system for the positions that are already in this account. Commissioner Kelleher asked how many positions are authorized for personal services. Mr. Jennings stated to answer your question on how many positions there are. There are 2 half time positions that are split with Milk Commission and that's the administrative assistant and resource administrator. There's 4 year-round full-time positions and 2 seasonal positions. Commissioner Timmons asked if there are anyone else from the public that have any comments. Hearing none he'd like to go back to Mr. Guay. He believes they're ready to bring this up and vote on it knowing that these are estimates and they can come back to them at a later time. AAG, Guay stated can you see the roll call. Commissioners stated yes. Commissioner Kelley stated do you need a motion. AAG, Guay stated he would say. Commissioner Kelley moved the motion. Commissioner McFarland seconded. Commissioner Timmons stated it's been moved and seconded that they adopt the recommended operating budget for 2022 to 2023 and he will state at the bottom of it, it says the total of all expenses is \$10,282,835.00 and that just gives them a place for people to understand what they're voting for. Commissioner McFarland stated if he's not mistaken what it says on this sheet that was provided Commission to approve and they highlighted just that section that's \$648,922.00 he thinks that's all they're voting on is that correct Mrs. Carlton. Mrs. Carlton stated you are voting on the budget with the 6 hundred number but also intuitively asking that you are looking to see that the acknowledging the personal services numbers that they may change based upon further information that they get. Essentially, that you're approving funding the same positions that you have in the past and any dollar fluctuation that may occur from any adjustments made for as she said retirement costs or insurance costs and then yes, the all other budget which is not salaries. Commissioner Timmons stated is that all other budget what you just said have to be included with the \$648,000. Mrs. Carlton stated she would suggest if you're voting to approve the document that you have as the notes say the adjustments are there in the note section so if you approve the document it would allow for those adjustments. AAG, Guay stated that's the way most --. Commissioner Timmons asked AAG, Guay to read that motion one more time. AAG, Guay stated the motion again they can change the language approve the recommended operating budget for the 2022 to 2023 biennium as attached to this order. So, you're approving a recommended budget because you can't actually. Commissioner Timmons stated right. Would you please take the roll please? AAG, Guay stated he did change one word in there he believes Commissioner McFarland made the motion. Do you agree to amend the motion? Commissioner Kelley stated he made the motion and yes. AAG, Guay stated Commissioner McFarland in terms of your second you also reflect the change.

Commissioner McFarland stated absolutely yes. AAG, Guay stated in all the confusion he's going to read the motion one more time.

## **RECORD OF ROLL CALL VOTE**

**Motion: To approve the recommended operating budget for the 2022 to 2023 biennium as attached to this order.**

**Commissioners:**

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|---------------------------|------------|
| <b>Michael Timmons:</b>   | <b>YEA</b> |
| <b>William McFarland:</b> | <b>YEA</b> |
| <b>Richard Shiers:</b>    | <b>YEA</b> |
| <b>James Kelley, Jr.</b>  | <b>YEA</b> |
| <b>Edward Kelleher</b>    | <b>YEA</b> |

**Vote is 5-0 the recommended operating budget is approved.**

3. **Presentation/review of the Annual Purse Distribution Plans from Maine's Eight Pari-mutuel Fairs.** Maine's eight pari-mutuel fairs have developed and submitted their annual purse distribution plans. The Commission will review the plans, take testimony from stakeholders, and determine whether to approve the plans.
- AAG, Guay stated may he make a suggestion. He asked Mr. Jennings if there is a collective recommendation by the department or do you wish that the fairs to go one at a time. Mr. Jennings stated he thinks there is, but Mr. Norris has his hand up and he thinks they should let Mr. Norris speak maybe to that question. AAG, Guay stated instead of hearing from each fair independently that let's hear from Mr. Norris. Commissioner Timmons stated that he agrees with that. Mr. Norris stated he is the executive director of the Maine Association of Agricultural Fairs. He's been asked by all 8 pari-mutuel fairs directors to represent them in an overview this morning to go over their amended plan. To give you just a little bit of history the race directors starting meeting back on July 13<sup>th</sup> and realized at that time there was monies allocated to them the April payment for 2020 that was really not due so in conjunction with the recommendation of the executive director all 8 fairs submitted checks to the department to return the April payment of 2020 in the amount of \$132,000. From that the overview of all the fairs and a copy of all the fairs plans. The race directors all got together and came up with a procedure that would assist in bringing back monies to the horsemen and also keep monies within their preview for 2021 because there was no racing in 2020. There is no income for the harness racing community as far as the pari-mutuel fairs are concerned. The October payment they're not due any money from January because they have not raced. That being set they came up with a percentage to give back to operate and keep monies to operate with for 2021. Commissioner Timmons stated is there anyone in the audience anyone that would identify themselves and identify their comments and concern with the procedure and what they're about to do. Aaron Hall with the horsemen's association stated they support the fairs what they're doing on it. If there's anything that needs to be tweaking, they think it might be able to be done at a race date hearing. He thinks as far as today they support you guys going ahead and approving it. Commissioner Timmons asked if anyone else had any comments. There were none. AAG, Guay stated he would read the motion. Commissioner Kelleher moved the motion. Commissioner Shiers seconded. AAG, Guay read the roll call.

## **RECORD OF ROLL CALL VOTE**

**Motion: Adopt the 8 annual first distribution plans submitted by the respective 8 pari-mutuel fairs attached to this order.**

**Commissioners:**

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|---------------------------|------------|
| <b>Michael Timmons:</b>   | <b>YEA</b> |
| <b>William McFarland:</b> | <b>YEA</b> |
| <b>Richard Shiers:</b>    | <b>YEA</b> |
| <b>James Kelley, Jr.</b>  | <b>YEA</b> |
| <b>Edward Kelleher</b>    | <b>YEA</b> |

**Motion passed 5-0.**

4. **Recommendations for Adjusting the 2020 Maine Sire Stakes Schedule.** During the 2020 race season, the Commission has been forced to make racing calendar decisions frequently and hastily at times due to the rapidly changing circumstances arising from the pandemic. On July 28, 2020, the Commission approved a three-month race calendar for August, September and October of 2020 that also included a Sire Stakes Schedule. Since that time, the Sire Stakes Advisory Committee met and developed some recommended changes to the schedule. In addition, the Board of Directors for the Maine Standardbred Breeders and Owners Association (MSBOA) also met to consider concerns/recommendations concerning the schedule. The MSBOA recommends adding another leg at the end of the schedule. The Commission will review both sets of recommendations and determine whether to make any changes to the 2020 Maine Sire Stakes schedule.
- Commissioner Timmons asked AAG, Guay how do you think it would be the way to move forward with this. AAG, Guay stated he would suggest based on the type of action that needs to occur that somebody from the sire stakes the people who are requesting this change that they'd be allowed to speak and then next you would ask whether Mr. Jennings has comments and open it up to the floor for other people. This is not an adjudicatory hearing so you would just take a vote. After a brief discussion on the sire stakes schedule, Commissioner Shiers made a motion that they accept the latest MSBOA schedule. Commissioner Kelley seconded.

#### **RECORD OF ROLL CALL VOTE**

**Motion: Accept the latest MSBOA schedule with the following dates, September 29, 2020 at Scarborough, September 30, 2020 at Bangor and October 3, 2020 at Scarborough.**

**Commissioners:**

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| <b>Michael Timmons:</b>   | <b>YEA</b>         |
| <b>William McFarland:</b> | <b>YEA</b>         |
| <b>Richard Shiers:</b>    | <b>YEA</b>         |
| <b>James Kelley, Jr.</b>  | <b>YEA</b>         |
| <b>Edward Kelleher</b>    | <b>NOT PRESENT</b> |

**Motion passed 4-0.**

5. **Churchill Downs, Inc. (CDI) Decision to Exclude Maine from Receiving its Racing Content Broadcasts.** The Commission will receive an update about the legal implications relative to CDI's decision to exclude Maine from its racing content and wagering products.

AAG, Guay stated this is an update on the letter to the Gambling Control Board. The Commission had previously asked him to provide a legal opinion regarding August 10, 2020 letter to the Gambling Control Board that letter was copied to Mr. Jennings and the matter was put on the agenda at the last meeting. They also heard from Chris McErlean who was the author of the letter at their last Maine State Harness Racing Commission meeting. He reviewed the content of the letter and would advise that the Maine Harness Racing Commission does not have jurisdiction over Churchill as a licensee nor in any role pursuant to their advance deposit wagering business as well, so the commission does not have a role. As a result of that no proceeding before this commission will participate. It's not foreseeable where there will ever be a complaint where this commission would be making a judgment regarding conduct of Churchill Downs about withholding the simulcast signal, so therefore the commissions investigation as to enforcement is not indicated. His advice is that the commission not open an investigation because there is no proceeding foreseeable that would be undertaking before the commission. Now that does not mean that the Maine Harness Racing Commission is without an interest. You do have an interest in simulcasting off-track betting facilities and commercial tracks and also the downstream beneficiaries of some past revenues that are collected by the State of Maine. They have not done any factual inquiries. He wants to make clear that what he's done for you and what he's been authorized to do for his other clients is a legal review. Commissioner Kelley moved the motion. Commissioner Shiers seconded. After the vote, Commissioner Timmons asked for public comment. There was no public comment.

#### **RECORD OF ROLL CALL VOTE**

**Motion: The Commission delegates, to the Chairman of the Commission, the power to authorize the filing of any legal action, recommended by Commission's counsel, pertaining to Churchill Downs refusal to simulcast to any of the Commission's licensees, if delaying such authority to the next Commission meeting would adversely impact remedies to be sought.**

#### **Commissioners:**

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|---------------------------|--------------------|
| <b>Michael Timmons:</b>   | <b>YEA</b>         |
| <b>William McFarland:</b> | <b>YEA</b>         |
| <b>Richard Shiers:</b>    | <b>YEA</b>         |
| <b>James Kelley, Jr.</b>  | <b>YEA</b>         |
| <b>Edward Kelleher</b>    | <b>NOT PRESENT</b> |

**Motion passed 4-0.**

- 6. Other Business**  
None.
- 7. Public Comment**  
None.
- 8. Schedule of Future Meetings:**  
Not available.
- 9. Adjourn**  
12:41 p.m.